

(1937) 11 CAL CK 0002
In the Calcutta High Court

Barkatulla Sheikh

APPELLANT

Vs

Jnanendra Chandra Ghosh and Others

RESPONDENT

Date of Decision : 25-11-1937

Acts Referred:

Bengal Tenancy Act, 1885 — Section 52

Citation : AIR 1938 Cal 281 : 175 Ind. Cas. 731

Hon'ble Judges : B.K. Mukherjea, J

Bench : Single Bench

Judgement

B.K. Mukherjea, J.—This is an appeal on behalf of the plaintiff and it arises out of a suit commenced by him for a declaration that the decrees passed in rent Suits Nos. 1386 of 1929 and 1037 of 1933 are fraudulent and inoperative. He prays further for a Permanent injunction restraining the landlord-defendants from executing the decree in rent Suit No. 1037 of 1933. The facts are not disputed and lie within a rather short compass. There was a jama held at a rental of Rs. 65-5-0 by one Gobinda Chandra Das and his co-sharers on the basis of a kabuliyat executed by Gobinda Chandra Das alone in favour of the landlords on Aswin 6, 1295 B.S. An eight annas interest in the tenancy devolved upon Raniani Sundari who is defendant No. 5 in the suit and the remaining eight anna share was inherited, as has been found by the trial Court, by defendants Nos. 6 and 7. The latter surrendered their interest in favour of the landlords and the holding of defendant No. 5 became separated from the old holding. Ramani Sundari mortgaged a portion of her interest to the present plaintiff who having obtained a mortgage decree against her, put up that interest to sale and purchased it himself on August 25, 1924.

2. In the year 1927 the landlords commenced a suit for eviction in which both Ramani and the present plaintiff were impleaded as parties-defendants. The suit was dismissed by the Courts below and the decision was affirmed on second appeal by this Court. During the pendency of the suit, the landlord-defendants instituted a rent suit against Ramani being rent Suit No. 1386 of 1929 in which

they prayed for enhancement of the rent u/s 30-B as well as u/s 52, Bengal Tenancy Act. This suit culminated in an ex parte decree, and when the landlords were about to put up the holding to sale, the plaintiff, on August 25, 1933, put in the money in Court for the purpose of averting the sale. In the year 1933 another suit was instituted by the landlord on the basis of the previous decree. To this suit, the plaintiff got himself added as a party-defendant. The Appellate Court gave the landlord a decree at the enhanced rate which was allowed in the previous rent Suit No. 1386 of 1929. The suit, however, was dismissed against the present plaintiff and he was given the right to institute a separate suit for having a declaration that the decree in the earlier suit was not binding on him. It is in pursuance of this direction that the present suit has been instituted.

3. Now the plaintiff seeks to challenge the decree in the earlier rent suit on the ground that the decree was a fraudulent and collusive one and that the landlord secured it in collusion with defendant No. 5. Of collusion, there has been no evidence given either oral or documentary, and it is not disputed by Mr. Chatterji who appears for the appellant that the summons in this suit was properly served and that there was no suppression of any of the processes of the Court. What was argued before the lower Appellate Court was simply this, that the decree passed in rent Suit No. 1386 of 1929 being on the basis of the kabuliyat of Gobinda Chandra Das, which was held to be not binding on his co sharers in the previous title suit, was a void and inoperative decree inasmuch as the question was already res judicata between the parties. It is one thing to say that a judgment is wrong in law either because it misconstrues or ignores a particular document or it has not given effect to a particular plea of law which might have been raised and argued and another thing to suggest that there was fraud either in suppressing the process of the Court or that the whole proceedings were a sham and collusive affair which was got up by the landlord in concert with the recorded tenant.

4. In my opinion the unrecognized transferee of a portion of an occupancy holding has undoubtedly a right to get a decree obtained against the recorded tenant set aside on the ground that it was vitiated by fraud or collusion; but it was not open to him to attack the decree simply on the ground that the decree was wrong in law and should not have been passed having regard to the evidence that was adduced in the case or the provisions of law which were applicable to the facts. Had there been any evidence of collusion adduced in this case, I would have seen my way either to send the case back or to consider the evidence here. But in the absence of any such evidence, I do not think that the appellant can succeed. The result is that this appeal is dismissed with costs one gold mohur.